

## Article 56.

### North Carolina Commercial Fertilizer Law.

#### **§ 106-655. Short title.**

This Article shall be known as the "North Carolina Commercial Fertilizer Law." (1977, c. 303, s. 1.)

#### **§ 106-656. Purpose of Article.**

The purpose of this Article shall be to assure the manufacturer, distributor, and consumer of the correct quality and quantity of all commercial fertilizer sold in this State, and to assure the safe handling of fluid fertilizers. (1977, c. 303, s. 2.)

#### **§ 106-657. Definitions.**

When used in this Article:

- (1) The term "brand name" means the name under which any individual mixed fertilizer or fertilizer material is offered for sale, and may include a trademark, but shall not include any numeral other than the grade of the fertilizer.
- (2) The term "bulk fertilizer" means a commercial fertilizer distributed in non-package form.
- (3) The term "commercial fertilizer" includes both fluid and dry mixed fertilizer and/or fertilizer materials.
- (4) The term "contractor" means any person, firm, corporation, wholesaler, retailer, distributor or any other person, who for hire or reward applies commercial fertilizer to the soil or crop of a consumer; provided, that this shall not apply to any consumer applying commercial fertilizer to only the land or crop that he owns or to which he otherwise holds rights, for the production of his own crops.
- (5) The term "distributor" means any person who offers for sale, sells, barter, or otherwise supplies mixed fertilizer or fertilizer materials.
- (6) The term "fertilizer material" means any substance containing either nitrogen, phosphorus, potassium, or any other recognized plant food element or compound which is used primarily for its plant food content or for compounding mixed fertilizers. Not included in this definition are all types of unmanipulated animal and vegetable manures and mulches for which no plant food content is claimed.
- (7) The term "fluid fertilizer" means a nonsolid commercial fertilizer.
- (8) The term "fortified mulch" means substances composed primarily of plant remains or mixtures of such substances to which plant food has been added and for which plant food is claimed.

In "fortified mulches" the minimum percentages of total nitrogen, available phosphate and soluble or available potash are to be guaranteed and the guarantee stated in multiples of quarter (.25) percentages; provided, however, that such percentages shall not exceed one percent (1%), respectively, subject to the same limits and tolerances set forth in this Chapter.

- (9) The term "grade" means the percentage of total nitrogen, available phosphate and soluble potash only stated in the order given in this subdivision, and, when

applied to mixed fertilizers, shall be in whole numbers only for all packages larger than 16 ounces.

- (10) The term "manipulated manures" means substances composed primarily of excreta, plant remains or mixtures of such substances which have been processed in any manner, including the addition of plant foods, artificially drying, grinding and other means.

In "manipulated manures" the minimum percentages of total nitrogen, available phosphate and soluble potash are to be guaranteed, and the guarantee stated in multiples of half (.50) percentages. Additions of plant food shall be limited to one-half (.50) percent each of nitrogen, phosphorus and potash.

- (11) The term "manufacturer" means a person engaged in the business of preparing, mixing, or manufacturing commercial fertilizers or the person whose name appears on the label as being responsible for the guarantee. The term "manufacture" means preparing, mixing, or combining fertilizer materials chemically or physically, including the simultaneous application of two or more fertilizer materials, by a manufacturer or contract applicator.
- (12) The term "mixed fertilizers" means products resulting from the combination, mixture, or simultaneous application of two or more fertilizer materials for use in, or claimed to have value in promoting plant growth.
- (13) The term "mulch" means substances composed primarily of plant remains or mixtures of such substances to which no plant food has been added and for which no plant food is claimed.
- (14) The term "natural organic fertilizer" means material derived from either plant or animal products containing one or more elements (other than carbon, hydrogen and oxygen) which are essential for plant growth. These materials may be subjected to biological degradation processes under normal conditions of aging, rainfall, sun-curing, air drying, composting, rotting, enzymatic, or anaerobic/aerobic bacterial action, or any combination of these. These materials shall not be mixed with synthetic materials, or changed in any physical or chemical manner from their initial state except by physical manipulations such as drying, cooking, chopping, grinding, shredding or pelleting.
- (15) The term "official sample" means any sample of commercial fertilizer taken by the Commissioner or his authorized agent according to the method prescribed in subsection (b) of G.S. 106-662.
- (16) The term "organic fertilizer" means a material containing carbon and one or more elements other than hydrogen and oxygen essential for plant growth.
- (17) The term "percent" or "percentage" means the percentage by weight.
- (18) The term "person" includes individuals, partnerships, associations, firms, agencies, and corporations, or other legal entity.
- (19) The term "retailer" means any person who sells or delivers fertilizer to a consumer.
- (20) The term "sale" means any transfer of title or possession, or both, exchange or barter of tangible personal property, conditional or otherwise for a consideration paid or to be paid, and this shall include any of said transactions whereby title or ownership is to pass and shall further mean and include any

bailment, loan, lease, rental or license to use or consume tangible personal property for a consideration paid in which possession of said property passes to the bailee, borrower, lessee, or licensee.

- (21) The term "sell" means the alienation, exchange, transfer or contract for such transfer of property for a fixed price in money or its equivalent.
- (22) The term "specialty fertilizer" means any fertilizer distributed primarily for use on noncommercial crops such as gardens, lawns, shrubs, flowers, golf courses, cemeteries and nurseries.
- (23) The term "ton" means a net ton of two thousand pounds avoirdupois.
- (24) The term "unmanipulated manures" means substances composed primarily of excreta, plant remains or mixtures of such substances which have not been processed in any manner.
- (25) The term "wholesaler" shall mean any person who sells to any other person for the purpose of resale, and who also may sell to a consumer.
- (26) Words importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular.
- (27) The term "fertilizer coated seed" means seed which has been coated with commercial fertilizer. (1947, c. 1086, s. 3; 1951, c. 1026, ss. 1, 2; 1955, c. 354, s. 1; 1959, c. 706, ss. 1, 2; 1961, c. 66, ss. 1, 2; 1977, c. 303, s. 3; 1981, c. 448, ss. 1-4; 1983, c. 146, s. 1; 1993, c. 216, s. 3.)

#### **§ 106-658. Enforcing official.**

This Article shall be administered by the Commissioner of Agriculture of the State of North Carolina, or his authorized agent, hereinafter referred to as the "Commissioner." (1947, c. 1086, s. 2; 1977, c. 303, s. 4.)

#### **§ 106-659. Minimum plant food content.**

Except as provided in this section, superphosphate containing less than eighteen percent (18%) available phosphate, or any mixed fertilizer in which the guarantees for the nitrogen, available phosphate, or soluble potash are in fractional percentages shall not be offered for sale, sold, or distributed in this State. Packages of 32 fluid ounces or less when in liquid form, or 32 ounces or less avoirdupois when in a dry form, may be sold in fractional percentages, but these packages are not exempt from any other requirements of this Article. (1947, c. 1086, s. 10; 1951, c. 1026, s. 7; 1973, c. 611, s. 6; 1975, c. 126; 1977, c. 303, s. 5; 1983, c. 146, s. 4; 1987, c. 292, s. 1; 1993, c. 216, s. 4; 2003-71, s. 1.)

#### **§ 106-660. Registration of brands; licensing of manufacturers and distributors; fluid fertilizers.**

(a) Each brand of commercial fertilizer for tobacco, specialty fertilizer, fertilizer materials, manipulated manure and fortified mulch shall be registered by the person whose name appears upon the label before being offered for sale, sold or distributed in this State, except those brands expressly produced for experimental and demonstration purposes only. Other fertilizers may be manufactured and sold without registration after obtaining a license as required in G.S. 106-661(a). The application for registration shall be submitted

in duplicate to the Commissioner for his approval on forms furnished by the Commissioner, and shall include a fee of five dollars (\$5.00) per brand and grade for all packages greater than five pounds. The registration fee for packages of five pounds or less shall be fifty-five dollars (\$55.00). All approved registrations expire on June 30 of each year. The application shall include such information as deemed necessary by the Board of Agriculture.

(b) The distributor of any brand and grade of commercial fertilizer shall not be required to register the same if it has already been registered under this Article by a person entitled to do so and such registration is then outstanding.

(c) The grade of any brand of mixed fertilizer shall not be changed during the registration period, but the guaranteed analysis may be changed in other respects and the sources of materials may be changed: Provided, prompt notification of such change is given to the Commissioner and the change is noted on the container or tag: Provided, further, that the guaranteed analysis shall not be changed if it, in any way, lowers the quality of the fertilizer: Provided, further, that if at a subsequent registration period, the registrant desires to make any change in the registration of a given brand and grade of fertilizer, said registrant shall notify the Commissioner of such change 30 days in advance of such registration. If the Commissioner, after consultation with the director of the agricultural experiment station decides that such change materially lowers the crop producing value of the fertilizer, he shall notify the registrant of his conclusions, and if the registrant registers the brand and grade with the proposed changes, then the Commissioner shall give due publicity to said changes through the Agricultural Review or by such other means as he may deem advisable.

(d) Any person desiring to manufacture or distribute fertilizers not required to be registered shall first secure a license. Application for said license shall be made on forms provided by the Commissioner and shall be accompanied by a reasonable fee to be determined by the Board of Agriculture. The Board shall charge a maximum of one hundred dollars (\$100.00) for said license. Said license shall be renewable annually on the first day of July. Said license may be suspended, revoked or terminated for a violation of this Article or any rule promulgated thereunder.

(e) When fluid fertilizer is offered for sale or sold in this State, the method of transfer of custody shall be by weight expressed in pounds, and shall be invoiced in such a manner as to show the name of the seller, the name of the purchaser, the date of sale, the grade, and the net weight; provided, however, that fluid fertilizer may be measured in gallons of 231 cubic inches and its equivalent expressed in pounds, with a formula for converting from gallons to pounds shown on the invoice.

(f) Repealed by Session Laws 1983, c. 146, s. 2.

(g) Before any anhydrous ammonia installation that handles, stores, distributes, or applies anhydrous ammonia for fertilizer use shall be built in this State, a general layout of the installation shall be submitted in duplicate and approved by the Commissioner. In order that the layout may be approved it must conform to the minimum standards and rules and regulations, relating to safe handling, storage, distribution, or application adopted by the Board of Agriculture. All storage tanks, transfer or transport containers, applicator containers, and attached equipment for fertilizer use shall conform to the minimum

standards adopted by the Board of Agriculture. It shall be the duty of a contractor, as defined in G.S. 106-657 to obtain, maintain and operate in accordance with the minimum standards and rules and regulations adopted by the Board of Agriculture, any equipment that the contractor may use in the application of anhydrous ammonia. It shall be the duty of the Commissioner to inspect and ascertain whether or not the provisions of this section are complied with. (1947, c. 1086, s. 4; 1949, c. 637, s. 1; 1951, c. 1026, ss. 3-6; 1959, c. 706, ss. 3-5; 1961, c. 66, ss. 3, 4; 1973, c. 611, ss. 1-4; 1977, c. 303, s. 6; 1981, c. 448, ss. 5, 6; 1983, c. 146, ss. 2, 3; 1987, c. 292, s. 2; 1989, c. 544, s. 5; 2001-440, s. 2; 2013-360, s. 13.9(a).)

#### **§ 106-661. Labeling.**

(a) Any commercial fertilizer offered for sale, sold, or distributed in this State in bags, barrels, or other containers shall have placed on or affixed to the container the net weight and the data in written or printed form, required by G.S. 106-660(a), either (i) on tags to be affixed to the end of the package or (ii) directly on the package. In case the brand name appears on the package, the grade shall also appear on the package, immediately preceding the guaranteed analysis or as a part of the brand name. The size of the type of numerals indicating the grade on the containers shall not be less than two inches in height for containers of 100 pounds or more; not less than one inch for containers of 50 to 99 pounds; and not less than 1/2 inch for packages of 25 to 49 pounds. On packages of less than 25 pounds, the grade must appear in numerals at least one half as large as the letters in the brand name. In case of fertilizers sold in containers on which the brand name or other designations of the distributor do not appear, the grade must appear in a manner prescribed by the Commissioner on tags attached to the container.

(b) If transported in bulk, the net weight and the data, in written or printed form, as required by G.S. 106-660(a), shall accompany delivery and be supplied to the purchaser.

(c) If mixed fertilizer is sold or intended to be sold in bags weighing more than 100 pounds, each bag must have a tag attached thereto, of a type approved by the Commissioner, showing the grade of the fertilizer contained therein. Such tag must be attached on the end of each bag, approximately at the center of the sewed end of the bag: Provided, that in lieu of such tag the grade of the fertilizer may be printed on the end of the bag in readily legible numerals.

(d) All labels and registrations shall carry identical guarantees for each fertilizer product requiring registration. (1947, c. 1086, s. 5; 1949, c. 637, s. 2; 1955, c. 354, s. 2; 1975, c. 127; 1977, c. 303, s. 7; 1981, c. 448, s. 7; 1989, c. 770, s. 28.)

#### **§ 106-662. Sampling, inspection and testing.**

(a) It shall be the duty of the Commissioner to sample, inspect, make analysis of, and test commercial fertilizers offered for sale, sold, or distributed within the State at such time and place and to such an extent as he may deem necessary to determine whether such commercial fertilizers are in compliance with the provisions of this Article. The Commissioner is authorized with permission or under court warrant to enter upon any public or private premises during regular business hours or at any time business is being conducted therein in order to have access to commercial fertilizers subject to the provisions of this Article and the rules and regulations thereto.

(b) The methods of sampling shall be as follows:

(1) For the purposes of analysis by the Commissioner and for comparison with the guarantee supplied to the Commissioner in accordance with G.S. 106-660 and 106-661, the Commissioner, shall take an official sample of not less than one

pound from containers of commercial fertilizer. No sample shall be taken from less than five containers. Portions shall be taken from containers as shown in the following table:

|                     |                |
|---------------------|----------------|
| 5 to 10 containers  | all containers |
| 11 to 20 containers | 10 containers  |
| 21 to 40 containers | 15 containers  |
| above 40 containers | 20 containers  |

Ten cores from bulk lots or as specified by the Association of Official Analytical Chemists (A.O.A.C.).

- (2) A core sampler shall be used that removes a core from a bag or other container in a horizontal position from a corner to the diagonal corner at the other end of the package, and the cores taken shall be mixed, and if necessary, shall be reduced after thoroughly mixing, to the quantity of sample required. The composite sample taken from any lot of commercial fertilizer under the provisions of this subdivision shall be placed in a tight container and shall be forwarded to the Commissioner with proper identification marks.
  - (3) The Board of Agriculture may modify the provisions of this subsection to bring them into conformity with any changes that may hereafter be made in the official methods of and recommendations for sampling commercial fertilizers which shall have been adopted by the Association of Official Analytical Chemists or by the Association of American Plant Food Control Officials. Thereafter, such methods and recommendations shall be used in all sampling done in connection with the administration of this Article in lieu of those prescribed in subdivisions (1) and (2) of this subsection.
  - (4) All samples taken under the provisions of this section shall be taken from original unbroken bags or containers, the contents of which have not been damaged by exposure, water or otherwise; provided, that any commercial fertilizer offered for sale, sold or distributed in bulk may be sampled in a manner approved by the Commissioner.
  - (5) The Commissioner shall refuse to analyze all samples except those taken under the provisions of this section and no sample, unless so taken, shall be admitted as evidence in the trial of any suit or action wherein there is called into question the value or composition of any lot of commercial fertilizer distributed under the provisions of this Article.
  - (6) In the trial of any suit or action wherein there is called in question the value or composition of any lot of commercial fertilizer, a certificate signed by the fertilizer chemist and attested with the seal of the Department of Agriculture and Consumer Services, setting forth the analysis made by the chemist of the Department of any sample of said commercial fertilizer, drawn under the provisions of this section and analyzed by them under the provisions of the same, shall be prima facie proof that the lot of fertilizer represented by the sample was of the value and constituency shown by said analysis. And the said certificate of the chemist shall be admissible in evidence.
- (c) The methods of analysis shall be those adopted as official by the Board of Agriculture and shall conform to sound laboratory practices as evidenced by methods prescribed by the

Association of Official Analytical Chemists of the United States. In the absence of methods prescribed by the Board, the Commissioner shall prescribe the methods of analysis.

(d) The result of official analysis of any commercial fertilizer which has been found to be subject to penalty shall be forwarded by the Commissioner to the registrant at least 10 days before the report is submitted to the purchaser. If, during that period, no adequate evidence to the contrary is made available to the Commissioner, the report shall become official. Upon request the Commissioner shall furnish to the registrant a portion of any sample found subject to penalty.

(e) Any purchaser or consumer may take and have a sample of mixed fertilizer or fertilizer material analyzed for available plant food, if taken in accordance with the following rules and regulations:

- (1) At least five days before taking a sample, the purchaser or consumer shall notify the manufacturer or seller of the brand in writing, at his permanent address, of his intention to take such a sample and shall request the manufacturer or seller to designate a representative to be present when the sample is taken.
- (2) The sample shall be drawn in the presence of the manufacturer, seller, or representative designated by either party together with two disinterested adult persons; or in case the manufacturer, seller, or representative of either refuses or is unable to witness the drawing of such a sample, a sample may be drawn in the presence of three disinterested adult persons; provided, any such sample shall be taken with the same type of sampler as used by the inspector of the Department of Agriculture and Consumer Services in taking samples and shall be drawn, mixed, and divided, as directed in subdivisions (1), (2), (3), and (4) of subsection (b) of this section, except that the sample shall be divided into two parts each to consist of at least one pound. Each of these is to be placed into a separate, tight container, securely sealed, properly labeled, and one sent to the Commissioner for analysis and the other to the manufacturer. A certificate statement in a form which will be prescribed and supplied by the Commissioner must be signed by the parties taking and witnessing the taking of the sample. Such certificate is to be made and signed in duplicate and one copy sent to the Commissioner and the other to the manufacturer or seller of the brand sampled. The witnesses of the taking of any sample, as provided for in this section, shall be required to certify that such sample has been continuously under their observation from the taking of the sample up to and including the delivery of it to an express agency, a post office or to the office of the Commissioner.
- (3) Samples drawn in conformity with the requirements of this section shall have the same legal status in the courts of the State, as those drawn by the Commissioner or any official inspector appointed by him as provided for in subsection (b) of this section.
- (4) No suit for damages claimed to result from the use of any lot of mixed fertilizer or fertilizer material may be brought unless it shall be shown by an analysis of a sample taken and analyzed in accordance with the provisions of this Article, that the said lot of fertilizer as represented by a sample or samples taken in accordance with the provisions of this section does not conform to the provisions of this Article with respect to the composition of the mixed fertilizer or fertilizer material, unless it shall appear to the Commissioner that the manufacturer of the fertilizer in question has, in the manufacture of other goods

offered in this State during such season, employed such ingredients as are prohibited by the provisions of this Article, or unless it shall appear to the Commissioner that the manufacturer of such fertilizer has offered for sale during that season any kind of dishonest or fraudulent goods or unless it shall appear to the Commissioner that the manufacturer of the fertilizer in question, or a representative, agent or employee of the manufacturer, has violated any provisions of G.S. 106-663. (1947, c. 1086, s. 7; 1955, c. 354, s. 3; 1973, c. 1304, s. 1; 1977, c. 303, s. 8; 1981, c. 448, s. 8; 1997-261, ss. 68, 69.)

**§ 106-663. False or misleading statements.**

It shall be unlawful to make, in any manner whatsoever, any false or misleading statement or representation with regard to any commercial fertilizer offered for sale, sold, or distributed in this State, or to use any misleading or deceptive trademark or brand name in connection therewith. The Commissioner is authorized to refuse, suspend, revoke or terminate the license of any manufacturer or to refuse, suspend, revoke or terminate the registration of such commercial fertilizer for any violations of this section. (1947, c. 1086, s. 12; 1977, c. 303, s. 9; 1981, c. 448, s. 9.)

**§ 106-664. Determination and publication of commercial values.**

For the purpose of determining the commercial values to be applied under the provisions of G.S. 106-665, the Commissioner shall determine and publish annually the values per pound of nitrogen, available phosphate, and soluble potash in commercial fertilizers in this State. The values so determined and published shall be used in determining and assessing penalties. (1947, c. 1086, s. 9; 1977, c. 303, s. 10; 1993, c. 216, s. 5.)

**§ 106-665. Plant food deficiency.**

(a) The Commissioner, in determining for administrative purposes, whether any commercial fertilizer is deficient in plant food, shall be guided solely by the official sample as defined in subdivision (15) of G.S. 106-657, and as provided for in subsections (b), (c), and (d) of G.S. 106-662.

(b) If the analysis shall show that any commercial fertilizer falls short of the guaranteed analysis in any ingredient, a penalty shall be assessed in accordance with the following provisions:

- (1) For total nitrogen, available phosphate, or available potash: A penalty of three times the value of the deficiency if the deficiency is in excess of the following investigational allowances.

| Guarantee<br>Percentage | Total<br>Nitrogen | Available<br>Phosphate | Soluble<br>Potash<br>Percentage |
|-------------------------|-------------------|------------------------|---------------------------------|
| 4 or less               | 0.49              | 0.67                   | 0.41                            |
| 5                       | 0.51              | 0.67                   | 0.43                            |
| 6                       | 0.52              | 0.67                   | 0.47                            |
| 7                       | 0.54              | 0.68                   | 0.53                            |
| 8                       | 0.55              | 0.68                   | 0.60                            |
| 9                       | 0.57              | 0.68                   | 0.65                            |



|            |      |      |      |
|------------|------|------|------|
| 10         | 0.58 | 0.69 | 0.70 |
| 12         | 0.61 | 0.69 | 0.79 |
| 14         | 0.63 | 0.70 | 0.87 |
| 16         | 0.67 | 0.70 | 0.94 |
| 18         | 0.70 | 0.71 | 1.01 |
| 20         | 0.73 | 0.72 | 1.08 |
| 22         | 0.75 | 0.72 | 1.15 |
| 24         | 0.78 | 0.73 | 1.21 |
| 26         | 0.81 | 0.73 | 1.27 |
| 28         | 0.83 | 0.74 | 1.33 |
| 30         | 0.86 | 0.75 | 1.39 |
| 32 or more | 0.88 | 0.76 | 1.44 |

Provided that when the found relative value of a sample is equal to or exceeds the guaranteed relative value, an overage in primary nutrients may compensate for a deficiency in another primary nutrient up to 10% of the guarantee of the deficient nutrient, not to exceed two units. No compensation shall be allowed toward a deficiency if the overage does not compensate for the entire amount of the deficiency or if the deficiency exceeds 10% of the guarantee or the deficiency exceeds two units. If more than one primary nutrient is in penalty status, no compensation shall be allowed.

- (2) Should the basicity or acidity as equivalent of calcium carbonate of any sample of fertilizer be found upon analysis to differ more than five percent (5%) (or 100 pounds of calcium carbonate equivalent per ton) from the guarantee, a penalty of fifty cents (50¢) per ton for each 50 pounds calcium carbonate equivalent, or fraction thereof in excess of the 100 pounds allowed, shall be assessed and paid as is prescribed in subsection (c) of this section.
- (3) Chlorine: If the chlorine content of any lot of fertilizer branded for tobacco shall exceed the maximum amount guaranteed by more than 0.5 of one percent, a penalty shall be assessed equal to ten percent (10%) of the value of the fertilizer for each additional 0.5 of one percent of excess or fraction thereof.
- (4) Water insoluble nitrogen: A penalty of three times the value of the deficiency shall be assessed, if such deficiency is in excess of 0.15 of one percent on goods guaranteed up to and including five-tenths percent; 0.20 of one percent on goods guaranteed from five-tenths percent to one percent; 0.30 of one percent on goods guaranteed from one percent to two percent; 0.50 of one percent on goods guaranteed above two percent and up to and including five percent; and 1.00 percent on goods guaranteed over five percent.
- (5) Nitrate nitrogen: A penalty of three times the value of the deficiency shall be assessed if the deficiency shall exceed 0.20 of one percent for goods

guaranteed up to and including five-tenths percent; 0.25 of one percent for goods guaranteed from five-tenths to one percent; 0.30 of one percent for goods guaranteed from one to two percent; and 0.35 of one percent for goods guaranteed above two percent up to four percent. Tolerances for goods guaranteed above four percent shall be the same as for total nitrogen.

- (6) Total magnesium: If the magnesium content is as much as 0.2 unit plus 5 percent of the guarantee below the minimum amount guaranteed, a penalty of one dollar (\$1.00) per ton shall be assessed for each 0.15 of one percent additional deficiency or fraction thereof.
- (7) Total calcium: If the calcium content is as much as 0.2 unit plus 5 percent of the guarantee below the minimum amount guaranteed, a penalty of one dollar (\$1.00) per ton shall be assessed for each 0.35 of one percent additional deficiency or fraction thereof.
- (8) Sulfur: If the sulfur content is as much as 0.2 unit plus 5 percent of the guarantee below the minimum amount guaranteed in the case of all mixed fertilizers, including mixed fertilizers branded for tobacco, a penalty of one dollar (\$1.00) per ton for each 0.50 of one percent additional excess or fraction thereof, shall be assessed.
- (9) Deficiencies or excesses in any other constituent or constituents covered under subdivisions (6) and (7), subsection (a), G.S. 106-660 which the registrant is required to or may guarantee shall be evaluated by the Commissioner and penalties therefor shall be prescribed by the Commissioner in fertilizer regulations.
- (10) For micro-nutrients as are not specifically covered in this Article, a tolerance of twenty-five percent (25%) of the guarantee will be allowed for each element, not to exceed 1/2 unit (.5%) on guarantees up to 15 units or percent and not to exceed one unit (1%) on guarantees above 15 units or percent.

(c) All penalties assessed under this section shall be paid to the consumer of the lot of fertilizer represented by the sample analyzed within three months from the date of notice by the Commissioner to the distributor, receipts taken therefor, and promptly forwarded to the Commissioner; provided, that in no case shall the total assessed penalties exceed the commercial value of the goods to which it applies. If said consumer cannot be found, the clear proceeds of the penalty assessed shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Such sums as shall be found to be payable to consumers on lots of fertilizer against which said penalties were assessed shall not be subject to claim by the consumer after 12 months from the date of assessment. (1947, c. 1086, s. 8; 1955, c. 354, s. 4; 1977, c. 303, s. 11; 1983, c. 146, s. 5; 1993, c. 216, s. 6; 1997-261, s. 109; 1998-215, s. 21.)

**§ 106-666. "Stop sale," etc., orders.**

(a) When the Commissioner finds that a lot of commercial fertilizer is being offered or exposed for sale in violation of any of the provisions of this Article, the Commissioner shall issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of commercial fertilizer and shall cause the fertilizer to be held at a designated place until (i) the law has been complied with and the commercial fertilizer is released in writing by the Commissioner or (ii) the violation has been otherwise legally disposed of by written authority. The Commissioner shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this Article have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal.

(b) If any manufacturer, dealer, or agent fails to pay a penalty owed on commercial fertilizer within 90 days after notice of assessment by the Commissioner, the Commissioner may issue and enforce a written or printed "stop sale, use, or removal" order to that manufacturer, dealer, or agent and shall cause any commercial fertilizer distributed and offered by that manufacturer, dealer, or agent for sale in the State to be held until (i) the penalties are paid in full and the commercial fertilizer is released in writing by the Commissioner or (ii) the penalties have been otherwise legally disposed of by written authority. The Commissioner shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this Article have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. (1947, c. 1086, s. 18; 1955, c. 354, s. 5; 1977, c. 303, s. 12; 1993, c. 216, s. 1.)

#### **§ 106-667. Seizure, condemnation and sale.**

Any lot of commercial fertilizer not in compliance with the provisions of this Article shall be subject to seizure on complaint of the Commissioner to a court of competent jurisdiction in the area in which said commercial fertilizer is located. In the event the court finds the said commercial fertilizer to be in violation of this Article and orders the condemnation of said commercial fertilizer, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer and the laws of the State; provided, that in no instance shall the disposition of said commercial fertilizer be ordered by the court without first giving the claimant an opportunity to apply to the court for the release of said commercial fertilizer or for permission to process or relabel said commercial fertilizer to bring it into compliance with this Article. (1947, c. 1086, s. 19; 1977, c. 303, s. 13.)

#### **§ 106-668. Punishment for violations.**

Each of the following offenses shall be a Class 1 misdemeanor and any person upon conviction thereof shall be punished as provided by law for the punishment of Class 1 misdemeanors:

- (1) To manufacture, offer for sale, or sell in this State any mixed fertilizer or fertilizer materials containing any substance that is injurious to crop growth or deleterious to the soil, or to use in such mixed fertilizer or fertilizer materials as a filler any substance with the effect of defrauding the purchaser.
- (2) To offer for sale or to sell in this State for fertilizer purposes any raw or untreated leather, hair, wool waste, hoof, horn, rubber or similar nitrogenous materials, the plant food content of which is largely unavailable, either as such or mixed with other fertilizer materials.
- (3) To make any false or misleading representation in regard to any mixed fertilizer or fertilizer material shipped, sold or offered for sale by him in this State, or to use any misleading or deceptive trademark or brand in connection therewith.

The sale or offer for sale of any mixture of nitrogenous fertilizer materials under a name or other designation descriptive of only one of the components of the mixture shall be considered deceptive and fraudulent.

The Commissioner is authorized to refuse registration for any commercial fertilizer with respect to which this section is violated.

- (4) The filing with the Commissioner of any false statement of fact in connection with the registration under G.S. 106-660 of any commercial fertilizer.
- (5) Forcibly obstructing the Commissioner or any official inspector authorized by the Commissioner in the lawful performance by him of his duties in the administration of this Article.
- (6) Knowingly taking a false sample of commercial fertilizer for use under provisions of this Article; or knowingly submitting to the Commissioner for analysis a false sample thereof; or making to any person any false representation with regard to any commercial fertilizer sold or offered for sale in this State for the purpose of deceiving or defrauding such other person.
- (7) The fraudulent tampering with any lot of commercial fertilizer so that as a result thereof any sample of such commercial fertilizer taken and submitted for analysis under this Article may not correctly represent the lot; or tampering with any sample taken or submitted for analysis under this Article, if done prior to such analysis and disposition of the sample under the direction of the Commissioner.
- (8) The delivery to any person by the fertilizer chemist or his assistants or other employees of the Commissioner of a report that is willfully false and misleading on any analysis of commercial fertilizer made by the Department in connection with the administration of this Article.
- (9) Selling or offering for sale in this State commercial fertilizer without marking the same as required by G.S. 106-661.
- (10) Selling or offering for sale in this State commercial fertilizer containing less than the minimum content required by G.S. 106-659.
- (11) Failure of any manufacturer, importer, jobber, agent, or dealer to have applied for and to have been issued a permit as required by G.S. 106-671 before selling, offering, or exposing for sale or distributing commercial fertilizers in this State.
- (12) Failure of any manufacturer or contractor to procure a license under the provisions of G.S. 106-660(d) before beginning operations within the State. (1947, c. 1086, s. 20; 1959, c. 706, ss. 10, 11; 1977, c. 303, s. 14; 1993, c. 539, s. 810; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 106-669. Effect of violations on license and registration.**

The Commissioner is authorized to suspend, revoke or terminate the license of any manufacturer or to refuse, suspend, revoke or terminate the registration of any commercial fertilizer upon proof that the manufacturer has been guilty of fraudulent or deceptive practices, or in the evasion or attempted evasion of this Article or any rule promulgated thereunder. (1947, c. 1086, s. 17; 1977, c. 303, s. 15; 1981, c. 448, s. 10.)

**§ 106-670. Appeals from assessments and orders of Commissioner.**

Nothing contained in this Article shall prevent any person from appealing to a court of competent jurisdiction from any assessment of penalty or other final order or ruling of the Commissioner or Board of Agriculture. (1947, c. 1086, s. 22; 1977, c. 303, s. 16.)

**§ 106-671. Inspection fees; reporting system.**

(a) For the purpose of defraying expenses on the inspection and of otherwise determining the value of commercial fertilizers in this State, there shall be paid to the Department of Agriculture and Consumer Services a charge of fifty cents (50¢) per ton on all commercial fertilizers other than packages of five pounds or less. Inspection fees shall be paid on all tonnage distributed into North Carolina to any person not having a valid reporting permit. Individual packages of five pounds or less shall be exempt from the tonnage fee; provided that any per annum (fiscal) tonnage of any brand sold in excess of one hundred tons shall be subject to the charge of fifty cents (50¢) per ton on any amount in excess of one hundred tons as provided herein. Whenever any manufacturer of commercial fertilizer shall have paid the charges required by this section his goods shall not be liable to further tax, whether by city, town, or county; provided, this shall not exempt the commercial fertilizers from an ad valorem tax.

(b) Reporting System. – Each manufacturer, importer, jobber, firm, corporation or person who distributes commercial fertilizers in this State shall make application to the Commissioner for a permit to report the tonnage of commercial fertilizer sold and shall pay to the North Carolina Department of Agriculture and Consumer Services an inspection fee of fifty cents (50¢) per ton. The Commissioner is authorized to require each such distributor to keep such records as may be necessary to indicate accurately the tonnage of commercial fertilizers sold in the State, and as are satisfactory to the Commissioner. Such records shall be available to the Commissioner, or his duly authorized representative, at any and all reasonable hours for the purpose of making such examination as is necessary to verify the tonnage statement and the inspection fees paid. Each registrant shall report monthly the tonnage sold to non-registrants on forms furnished by the Commissioner. Such reports shall be made and inspection fees shall be due and payable monthly on the fifteenth of each month covering the tonnage and kind of commercial fertilizers sold during the past month. If the report is not filed and the inspection fee paid by the last day of the month it is due, the amount due shall bear a penalty of ten percent (10%), which shall be added to the inspection fee due. If the report is not filed and the inspection fee paid within 60 days of the date due, or if the report or tonnage be false, the Commissioner may revoke the permit. (1947, c. 1086, s. 6; 1949, c. 637, s. 3; 1959, c. 706, ss. 6, 7; 1973, c. 611, s. 5; 1977, c. 303, s. 17; 1991, c. 98, s. 2; 1997-261, s. 109; 2009-451, s. 11.1; 2011-145, s. 31.8(a); 2013-360, s. 13.9(b).)

**§ 106-672. Declaration of policy.**

The General Assembly hereby finds and declares that it is in the public interest that the State regulate the activities of those persons engaged in the business of preparing, mixing, or manufacturing commercial fertilizers, in order to insure the manufacturer, distributor and consumer of the correct quantity and quality of all commercial fertilizer sold or offered for sale in this State. It shall therefore be the policy of this State to regulate the activities of those persons

engaged in the business of preparing, mixing or manufacturing commercial fertilizer. (1977, c. 303, s. 18.)

**§ 106-673. Authority of Board of Agriculture to make rules and regulations.**

Because legislation with regard to commercial fertilizer sold or offered for sale in this State must be adapted to complex conditions and standards involving numerous details with which the General Assembly cannot deal directly and in order to effectuate the purposes and policies of this Article, and in order to insure the manufacturer, distributor, and consumer of the correct quality and quantity of all commercial fertilizer sold or offered for sale in this State, the Board of Agriculture shall have the authority to make rules and regulations with respect to:

- (1) The maximum chlorine guarantee permitted for tobacco fertilizer;
- (2) The maximum chlorine guarantee permitted in tobacco top dressers;
- (3) Which grades of fertilizer may be branded top dressers;
- (4) The labeling of the grade of fertilizer when such fertilizer is sold in plain or unbranded bags;
- (5) The labeling requirements for all containers of liquid commercial fertilizer for direct application to the soil;
- (6) The bag sizes which may be used in the sale of commercial fertilizer;
- (7) The labeling requirements for packages containing a combination of any nonfertilizer material and mixed tobacco fertilizer;
- (8) Registration and labeling requirements for grades and brands of fertilizer carrying any guarantee of boron; the tolerance allowances for the percentage of boron in fertilizer mixtures;
- (9) The required composition for boron-landplaster mixtures before they may be registered and sold for use on peanuts in this State; the labeling requirements for each container of such mixture;
- (10) The monetary penalties assessed for excesses or deficiencies of boron and all other minor elements above or below the tolerances allowed;
- (11) The registration and labeling of general crop grades and tobacco grades;
- (12) The method, and the time limitations for the reporting to the Commissioner of Agriculture of the tonnage of each grade of fertilizer shipped to each destination in the State by each manufacturer or firm having fertilizer registered in this State;
- (13) The required composition, before such mixtures may be registered and sold in this State, of fertilizer-pesticide, landplaster-pesticide, and fertilizer-landplaster-pesticide, when to be used for peanuts alone;
- (14) The labeling and bag requirements of fertilizer-landplaster-pesticide mixtures;
- (15) The standards and requirements which must be met before fertilizer-pesticide mixtures may be registered in this State. These requirements may include, but are not limited to, approval in North Carolina of both the pesticide and the fertilizer grades, approval of the mixture by the Board of Agriculture, and any labeling requirements;
- (16) The standards and requirements which must be complied with before fertilizers-pesticides may, without registering the mixture, be mixed for direct application at the farmer's request;

- (17) Requests for mixing any pesticide with fertilizer, for products not previously approved by the Board of Agriculture;
- (18) Packaging requirements for fertilizer-pesticide mixtures sold either in bulk or in bags, such that dusting, spillage, sifting, or a loss of any fertilizer-pesticide mixture will not occur;
- (19) The percentages of nitrogen required to be in nitrogen solutions, before such solutions may be registered and sold in this State;
- (20) The labeling of fertilizer products to ascertain their compliance to the Fertilizer or Lime and Landplaster Law;
- (21) Requesting substantiating data to back up claims made about a fertilizer product; registration may be denied if such data is not furnished;
- (22) The denial of approval of the registration of fertilizer products when such products will not, when used as directed, supply deficient needs of a plant;
- (23) Safety requirements for the movement, handling and storage of fluid fertilizers;
- (24) Standards and requirements for equipment and tanks for handling liquid fertilizer;
- (25) Refusing registration as a result of information or recommendations from the director of research stations;
- (26) Establishing minimum guarantees permissible for registering secondary elements and micronutrients;
- (27) Establishing minimum standards for containment of fertilizer materials in storage to prevent contamination of groundwater and surface water; and
- (28) Standards and labeling requirements for specialty fertilizers. (1947, c. 1086, s. 15; 1949, c. 637, s. 4; 1977, c. 303, s. 19; 1991, c. 100; 1993, c. 216, s. 2.)

**§ 106-674. Short weight.**

If any commercial fertilizer in the possession of the consumer is found by the Commissioner to be short in weight, the registrant of said commercial fertilizer shall within 30 days after official notice from the Commissioner pay to the consumer a penalty equal to four times the value of the actual shortage. The Commissioner may in his discretion allow reasonable tolerance for short weight due to loss through handling and transporting. (1947, c. 1086, s. 16; 1977, c. 303, s. 20.)

**§ 106-675. Publication of information concerning fertilizers.**

The Commissioner shall publish at least annually, in such forms as he may deem proper, complete information concerning the sales of commercial fertilizers, together with a report of the results of the analyses based on official samples of commercial fertilizers sold or offered for sale within the State; such data on their production and use as he may consider advisable; provided, however, that the information concerning production and use of commercial fertilizers shall be shown separately for periods July first to December thirty-first and January first to June thirtieth of each year, and that no disclosure shall be made of the operations of any person. (1947, c. 1086, s. 14; 1959, c. 706, s. 9; 1977, c. 303, s. 21.)

**§ 106-676. Sales or exchanges between manufacturers, etc.**

Nothing in this Article shall be construed to restrict or avoid sales or exchanges of commercial fertilizers to each other by importers or manufacturers who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizers to manufacturers who

have registered their brands as required by the provisions of this Article. (1947, c. 1086, s. 21; 1977, c. 303, s. 22.)

**§ 106-677. Grade-tonnage reports.**

Each person registering commercial fertilizers under this Article shall furnish the Commissioner with a written statement of the tonnage of each grade of fertilizer sold by him in this State. This information shall be held in confidence by the Commissioner. Said statement shall include all sales for the periods of July first to and including December thirty-first and of January first to and including June thirtieth of each year. The Commissioner may suspend, revoke or terminate the registration of said commercial fertilizer and suspend, revoke or terminate the license of any person failing to comply with this section within 30 days of the close of each period. All information published by the Department of Agriculture and Consumer Services pursuant to this section shall be classified so as to prevent the identification of information received from individual registrants. All information received pursuant to this section shall be held confidential by the Department and its employees. (1947, c. 1086, s. 13; 1977, c. 303, s. 23; 1981, c. 448, s. 11; 1997-261, s. 109.)

**§ 106-678. Authority to regulate fertilizers.**

No county, city, or other political subdivision of the State shall adopt or continue in effect any ordinance or resolution regulating the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, manufacture, or application of fertilizer. Nothing in this section shall prohibit a county, city, or other political subdivision of the State from exercising its planning and zoning authority under Article 19 of Chapter 160A of the General Statutes or Article 18 of Chapter 153A of the General Statutes or from exercising its fire prevention or inspection authority. Nothing in this section shall limit the authority of the Department of Environmental Quality or the Environmental Management Commission to enforce water quality standards. Nothing in this section shall prohibit a county, city, or other political subdivision of the State from adopting ordinances regulating fertilizers to protect water quality, provided that the ordinances have been approved by the Environmental Management Commission or the Department of Environmental Quality as part of a local plan or National Pollutant Discharge Elimination System permit application and do not exceed the State's minimum requirements to protect water quality as established by the Environmental Management Commission under Part 1 of Article 21 of Chapter 143 of the General Statutes. Nothing in this section shall prohibit a county or city from exercising its authority to regulate explosive, corrosive, inflammable, or radioactive substances pursuant to G.S. 153A-128 or G.S. 160A-183. (2014-113, s. 2.4(b); 2015-241, s. 14.30(u).)

**§ 106-679:** Reserved for future codification purposes.

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